

SEP 22 1919

JAMES D. MAHER,  
CLERK

No. 472-152

# SUPREME COURT OF THE UNITED STATES

JAMES W. PEAKE,

versus

CITY OF NEW ORLEANS.

OCTOBER TERM 1919.

MOTION TO ADVANCE.

BRIEF ON BEHALF OF THE NEW ORLEANS LAND  
CO., APPELLANT, ON MOTION TO ADVANCE  
ITS ANCILLARY BILL AGAINST THE LEADER  
REALTY CO.

CHS. LOUQUE,

W. O. HART,

*Of Counsel.*

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On motion of Charles Louque and W. O. Hart of Counsel for the New Orleans Land Co. and on suggesting to the Court that this cause presents only a question of jurisdiction which under rule 32 of this Honorable Court "will be advanced on motion."

It is ordered by the Court that this cause be fixed for trial on the.....day of.....and that the opposite party be notified.

I certify that copy of this motion has been served on this....19.....day of September, 1919. on Messrs. Lemle & Lemle and W. W. Wall.

New Orleans, September...19....., 1919.

*Charles Louque*

No. 472

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This cause presents a question of jurisdiction solely.

The decision rests on one point only: Is the bill of complaint filed by the New Orleans Land Co. an ancillary one or not?

If, as we construe the law and the equity <sup>law</sup>jurisdiction, we are entitled to file the bill, the Court is vested with jurisdiction, and the judgment <sup>it</sup>which dismisses our bill for want of jurisdiction should <sup>be</sup>reversed and the cause remanded to be tried on its merits.

The grave question which is at issue in this case is, when any of the United States Courts sitting as Courts of Equity, render a solemn judgment decreeing that a State had a right and did by its statutes, create a trust in favor of a creditor for work to be done, and the work being done the Court ordered the trust to be executed by the sale of the trust estate, through its master in Chancery, which sale the Court afterwards confirmed, whether these proceedings can be disregarded by the State Court, treated as null and the purchaser dispossessed, without any right on the part of the United States Court to protect him and his assigns and maintain its jurisdiction which was lawfully acquired?

When the Constitution of the United States provided for Courts of its own, giving them full jurisdiction in law and equity, this was a real grant of power, which when exercised, must and shall be respected by the State Courts.

In the case at bar, James W. Peake a citizen of the State of New York, a judgment creditor, brought his bill of complaint against the City of New Orleans, the legal trustee of the drainage fund, for himself and all the other creditors of the drainage fund, in the late Circuit Court of the United States for the Eastern District of Louisiana, having territorial jurisdiction of the City of New Orleans. The bill alleged that under acts of the Legislature of Louisiana of March 18th, 1858, No. 165, 1859, No. 191, 1861, No. 57 and act No. 30 of 1871, a drainage system was created by the State of Louisiana, officers appointed, who complied with the requirements of the act, "levied, execution upon various pieces of property and bought in the same and took a surrender of" various other pieces in satisfaction of drainage taxes

**"imposed thereon \* \* \* all of which are held in trust  
for the creditors of the drainage fund."**

The prayer of the bill was for the appointment of a Receiver, and the sale of the trust property, etc. The Receiver was appointed and qualified as such, took possession of the assets, including the land in dispute, obtained an order for the sale of said property, sold the same to Dr. C. A. Gaudet, the transferer of the New Orleans Land Co., the Court confirmed the sale, the judgment of confirmation was, on appeal to the Circuit Court of Appeal for the Fifth Circuit, duly affirmed, as seen by the judgment reported in 52 Fed. Rep. 74, *Peake vs. New Orleans*; the purchaser paid the price of adjudication to the Receiver, received his regular deed of sale and went into possession of the property purchased by him. This took place in 1892 and on February 20th, 1893, received his deed of sale.

In 1909, December the 8th, a petitory action was filed by the Leader Realty Co. claiming the land in dispute. The State Court finally rendered judgment in favor of the Leader Realty Co. The New Orleans Land Co., transferee of Dr. Gaudet, who had purchased from the Receiver, sought the protection of the United States Court, praying that the sale made by and under its orders be maintained by the issuance of a writ of injunction, and its previous jurisdiction asserted.

This proceeding is clearly an ancillary one wherein the New Orleans Land Co. is seeking to obtain **"and secure the fruits, benefits and advantages of the proceeding and judgment of the United States Court by additional parties** standing in the same interest" and to **"assert a claim, right and title to the property which had been in the custody of the Court."**

If there be any virtue and authority in the decrees of this Court which adopted the doctrine above quoted and laid down by Mr. Bates on Federal Equity as decided in *Julian vs. Central Trust Co.*, 193 U. S., p. 93, then the decree appealed from should be reversed and this cause remanded to be tried on its merits. Meanwhile the writ of injunction prayed for should be issued to protect the interest of the Complainant.

"When a Court has jurisdiction, it has the right to decide every question that arise the cause; and whether the decision be correct or not its judgment is regarded as binding in every other Court." 10 *Peters* 475, *Voorkies vs. Bank*.

"\* \* \* titles acquired under the proceedings of Courts of competent jurisdiction must be deemed inviolable in collateral actions, or none can know what is his own; and there are no judicial sales around which greater sanctity ought to be placed than those made under orders of Court." 2 *How* 343, *Grignon's Lessees vs. Astor et als.*

It would be a grave defect in the organization of the United States Government if sales made under the authority of its own Courts could be disregarded, without right on the part of her Courts to protect and maintain their own jurisdiction.

We consider this short synopsis of this cause to be sufficient to obtain the granting of the motion to advance made under rule 32 of this Court.

No other question is involved.

Respectfully submitted,

CHS. LOUQUE,  
W. O. HART,

*Of Counsel.*

The United States Court having jurisdiction of an equity cause in which real estate was sold under its orders to foreclose a trust, has jurisdiction to entertain an ancillary bill to protect the purchaser and his assigns, in their title and possession.

Under rule 32 of this Court, an appeal involving merely a question of jurisdiction, is entitled to be advanced.

New Orleans, September 15th, 1919.